a

SALIM ISMAIL & ORS.

v.

LEBBEY SDN. BHD. (NO. 1)

COURT OF APPEAL, KUALA LUMPUR
b SITI NORMA YAAKOB JCA
MAHADEV SHANKAR JCA
ABDUL MALEK AHMAD J
[CIVIL APPEAL NO: B-02-256-95]
14 AUGUST 1995

c ***CIVIL PROCEDURE:*** *Eviction order - Summary eviction of occupiers of land - Order 89 Rules of the High Court 1980 - Stay of execution - Whether to be granted - Prospect of appeal succeeding.*

This was an appeal against the decision of the High Court refusing the
d appellants' application for stay of the eviction orders made against them under O. 89 Rules of the High Court 1980. The facts showed that the appellants were long standing occupants of State land in the Mukim of Ampang, Selangor, and had stayed thereon without any objection from the State Government. The land, however, was subsequently alienated to the respondent. The respondent
e had wanted to develop the land, and apparently had borrowed a substantial sum of money from its bankers for the purpose. In the Court below, in proceedings to evict the appellants under O. 89 of RHC 1980, the respondent argued that delay in the development would have adverse financial effects of a magnitude which the appellants could not possibly have been able to
f compensate. The appellants argued that summary order was improper as they had occupied the land as licensees coupled with equity. The learned Judge held that no triable issues existed and so ordered summary eviction as prayed. The learned Judge also rejected the appellants's application for stay, against which the appellants have now appealed.

g **Held:**

Per. Mahadev Shankar JCA (delivering the judgment of the Court):

[1] The orders in the Court below were not made after full trial but on a summary application by Lebbey on affidavit evidence. The grounds of
h judgment of the trial Judge are not before this Court and it would be premature for this Court to say that this appeal is without any prospect of success.

i

[2] In deciding whether to grant a stay, the Court has to balance the financial repercussions which will be suffered by Lebbey with the imminent destruction of the homes of the applicants if the orders appealed against were enforced.

[3] The subject matter of this appeal from the applicants' point of view is their continued right to stay in their homes until their claims have been finally disposed of in a full trial. The destruction of that right cannot be adequately compensated with money. This is a special reason why a stay should be granted.

[Appeal allowed. Stay order granted]

*[**Bahasa Malaysia** Translation of Headnotes]*

PROSEDUR SIVIL: *Perintah pengusiran - Pengusiran secara terus penghuni-penghuni tanah - Aturan 89 Kaedah-kaedah Mahkamah Tinggi 1980 - Penggantungan pelaksanaan - Samada patut diberi - Prospek untuk rayuan berjaya.*

Ini adalah rayuan terhadap keputusan Hakim yang bijaksana yang menolak permohonan perayu untuk penggantungan perintah-perintah terus yang dibuat di bawah A. 89 Kaedah-kaedah Mahkamah Tinggi 1980. Perayu adalah penghuni yang telah lama menghuni tanah Kerajaan di Mukim Ampang, Selangor, dan telah menduduki tanah berkenaan tanpa apa-apa bantahan dari Kerajaan Negeri. Tanah tersebut, bagaimanapun, kemudiannya telah diberimilik kepada responden. Responden berhasrat untuk memajukan tanah tersebut, dan untuk tujuan itu telah mendapatkan pinjaman yang besar dari bank. Di Mahkamah dibawah, berikutan prosiding di bawah A. 89 KMT 1980 untuk mengusir perayu, responden berhujah bahawa kelewatan memajukan tanah tersebut akan memberikan kesan buruk dari segi tanggungan kewangannya yang mana tidak mungkin dapat dipampas oleh perayu. Perayu berhujah bahawa perintah terus adalah tidak wajar oleh kerana mereka menghuni tanah tersebut sebagai pemegang lesen yang disertai dengan ekuiti. Hakim yang bijaksana memutuskan bahawa tiada isu-isu yang boleh dibicarakan telah berbangkit, dan atas alasan itu memberikan perintah pengusiran terus seperti yang dipohon. Hakim yang bijaksana juga telah menolak permohonan perayu untuk penggantungan, terhadap perintah mana perayu kini merayu.

Diputuskan:

Oleh Mahadev Shankar HMR (menyampaikan penghakiman Mahkamah):

[1] Perintah-perintah di Mahkamah di bawah tidak dibuat berikutan suatu perbicaraan penuh tetapi di buat berdasarkan kepada suatu permohonan

terus oleh Lebbey yang berlandaskan kepada keterangan afidavit. Alasan-alasan penghakiman Hakim perbicaraan telah tidak dikemukakan di hadapan Mahkamah ini dan ianya adalah terlalu awal untuk Mahkamah ini mengatakan bahawa rayuan ini tidak mempunyai prospek untuk berjaya.

[2] Dalam memutuskan samada untuk memberi penggantungan atau pun tidak, Mahkamah harus membuat pertimbangan di antara kesan beban kewangan yang akan ditanggung oleh Lebbey dan kemusnahan hartabenda yang mungkin akan dialami oleh perayu sekiranya perintah-perintah yang dirayui itu dikuatkuasakan.

[3] Halperkara rayuan ini menurut perayu adalah hak mereka untuk terus menduduki rumah-rumah mereka sehingga tuntutan mereka diselesaikan dalam suatu perbicaraan penuh. Pemusnahan hak ini tidak boleh diberikan pampasan berupa wang dengan secukupnya. Ini merupakan satu alasan yang istimewa mengapa satu penggantungan seharusnya diberikan.

[Rayuan dibenarkan. Perintah penggantungan dibuat]

Legislation referred to:
Rules of the High Court, 1980 O. 14, O. 89

For the applicants - R. Sivarasa (Yasmeen Sharif with him); (M/s. Mahani Hamid & Yasmeen)
For the respondent - V.S. Viswanathan; M/s. T.H. Su & Co.

JUDGMENT

Mahadev Shankar JCA:

This is an application for a stay of execution which we granted. The respondents have appealed to the Federal Court.

The applicants are long standing occupants of the land comprising in HS (D) 34221 PT No. 30186 Mukim Ampang, Daerah Ulu Langat (the said Land). The applicants had erected thereon permanent structures in which they live. Some of them also cultivated the said Laid. Throughout they were permitted to occupy the Land by the state authority without objection. On account of their long standing presence on the Land, they claim they have the right to occupy the Land as licensees coupled with equity. The state authority did not take any direct to terminate the applicants' occupation of the said Land.

The Land was then alienated by the Selangor Authority to the respondent's company (Lebbey) for a substantial premium. Lebbey claims that it had borrowed a substantial sum of money from its bankers in order to finance the development of this Land. It is submitted that the interest charges payable on

the loan taken escalate from day to day and that any delay in the development will have adverse financial effects of a magnitude which the applicants cannot compensate.

At all material times Lebbey was aware of the presence of the applicants on the Land. After the Land was alienated, Lebbey claimed to have terminated the applicants' right to occupy the said Land and initiated proceedings in the High Court in Shah Alam to evict the applicants. The applicants challenge Lebbey's right to evict them.

On 7 April 1995 Lebbey's application under O. 89 of the Rules of the High Court 1980 were heard and it obtained orders for the summary eviction of the applicants.

The applicants then applied for a stay of execution in the Court below. They were refused and therefore came to us.

It is to be noted that the orders in the Court below were not made after full trial but on a summary application by Lebbey on affidavit evidence. The grounds of judgment of the trial Judge are not before us and it would be premature for us to say that this appeal is without any prospect of success.

In deciding whether to grant a stay, we have to balance the financial repercussions which will be suffered by Lebbey with the imminent destruction of the homes of the applicants if the orders appealed against are enforced.

The subject-matter of this appeal from the applicants' point of view is their continued right to say in their homes until their claims have been finally disposed of in a full trial. The destruction of that right cannot be adequately compensated with money. This is a special reason why a stay should be granted. Lebbey's Counsel requested that the Court only grant a conditional stay and require applicants to deposit RM1,000,000 if a stay is to be granted. We did not think that such a request was realistic.

We therefore granted a stay but directed that the appeal record be filed within seven days from the date of our order. We also directed that there should be an early hearing of the appeal, and the costs of this application abide the result of the appeal.

Reported by W.A. Sharif